

04-3 BOROWIEC V. GATEWAY 2000, INC.

Decision Below: 331 Ill.App.3d 842 (2002)

Question Presented

In enacting the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act, 15 U.S.C. 1301 et seq., Congress delegated express authority to the Federal Trade Commission ("FTC") to carry out Congress' intent and to formulate policies and rules to effectuate the Magnuson-Moss' regulatory scheme. In doing so, the FTC promulgated regulation barring warrantors from including binding arbitration clauses in their warranties, 64 Fed. Reg. 19700, 19708 (Apr. 22, 1999). Congress intended that the obligation to participate in arbitration would not foreclose a consumer's eventual access to the courts to press a claim for warranty breach. This regulation was disregarded by the Illinois Supreme Court in contravention to this Court's recent opinion in *Household Credit Services, Inc. v. Pfenning*, 541 U.S. ___, 124 S.Ct. 1741 (April 21, 2004), where this Court held that the *Chevron* test must be followed and where Congress has left gaps for the agency to fill, the agency's regulations must be given controlling weight unless the interpretations are arbitrary, capricious, or manifestly contrary to the statute. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837,843-44 (1984). Nevertheless, in contrast to the Supreme Court of Mississippi in *Parkerson v. Smith*, 817 So.2d 529 (2002), a divided panel of the Illinois Supreme Court, rejected the FTC's regulation and decided that the Magnuson-Moss Warranty Act did not preclude binding arbitration. The question presented for review is:

Whether the Supreme Court of Illinois improperly substituted its own interpretation of the Magnuson-Moss Warranty Act, in violation of *Household* and *Chevron*, instead of giving controlling weight to the FTC's regulation that the Warranty Act prohibits warrantors from requiring consumers to resort to binding arbitration.